Publication No. X

The Laws of New York Favor and Protect Woman

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With Introduction by

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THE MAN-SUFFRAGE ASSOCIATION OPPOSED TO EXTENSION OF POLITICAL SUFFRAGE TO WOMEN

27 WILLIAM STREET, NEW YORK

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INTRODUCTION

In discussing the proposed Constitutional Amendment to extend political suffrage to women, it has been frequently stated by the advocates of woman suffrage that the laws of the State of New York discriminate against women. These statements have been denied from time to time by eminent lawyers, but inasmuch as they are continually repeated, it seems proper that a statement of existing law on this subject should be published and that this statement should be fortified by reference to existing statutes and to decisions of the courts pertinent to this matter.

The fact that men alone have enacted and construed the laws of the state does not determine or in any way affect the question whether these laws discriminate against women or the reverse. Whether there be such discrimination depends in any case on the terms and effect of the law under consideration or upon the terms and effect of the decisions of the courts. The following exposition of the law establishes the fact that although men have enacted and construed the laws of this state, these laws do not discriminate in any particular against women but that on the contrary, they favor and protect women in each and every instance where they do not operate with entire equality as between men and women.

We confidently submit to the People of the State of New York, this proposition—that these laws as a whole and in every particular, register the solemn and fixed determination of the men of this state that the women, who, under God, have brought love and joy and good into their lives, must and shall be protected and maintained, and that the burden of political suffrage shall not be imposed upon them.

EVERETT P. WHEELER,
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For Man-Suffrage Association.

New York, April 28, 1915.

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THE LAWS OF NEW YORK FAVOR AND PROTECT WOMEN.

FIRST.

LAWS THAT DISCRIMINATE IN FAVOR OF WOMEN.

In 1765 Blackstone, writing that part of his Commentaries upon the laws of England that deals with the subject of "Husband and Wife", exclaimed, "So great a favorite is the female sex of the laws of England." (1 Bl. Com. 445)

This paper is written to show and illustrate the fact that to-day and in the State of New York, "a favorite is the female sex of the law".

In addition to the laws hereinafter specifically mentioned that affirmatively discriminate in favor of women, some of those passed for the special protection of women will be quoted in this paper. It will, moreover, be shown that certain discriminations against women that the advocates of universal suffrage complain of, do not, in point of fact, exist.

A brief mention of the laws relating to children will be added.

1. Dower and Curtesy.

At common-law dower was a life interest which a wife had at her husband's death in one-third of the real estate which he had owned at any time during the marriage; and curtesy was a corresponding life interest which a husband had at his wife's death in all her real estate, provided a child had been born alive. As to the quantum of the corresponding interests the common-law preferred the man.

But in this State the so-called Married Women's Property Acts of 1848 and 1849 wrought a change. For a time after their passage it was thought that these Acts had had the effect of entirely abolishing curtesy, but it is now settled that the shadow of the common law curtesy survives to bear the same name. There has never been any doubt, however, of the existence of dower. The interest is expressly declared by statute. Section 190 of the Real Property Law (Consol. L. ch. 50) reads: "A widow shall be endowed of the third part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage." Section 191 provides that if a husband exchanges lands for other lands his widow may have an election between the lands transferred or the lands received. And section 203 declares:

> "An act, deed or conveyance, executed or performed by the husband without the assent of his wife, evidenced by her acknowledgment thereof, in the manner required by law to pass

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the contingent right of dower of a married woman, or a judgment or decree confessed by or recovered against him, or any laches, default, covin, or crime of a husband, does not prejudice the right of his wife to her dower or jointure, or preclude her from the recovery thereof."

The result is that there is no way in which the husband can, either in his lifetime or at his death, extinguish or impair his wife's inchoate right to dower in all his real estate. Any attempted mode of disposition by a husband of his real estate leaves the wife's dower interest firmly attached to the realty in whosesoever hands it may be. On the other hand the husband's possibility of curtesy in his wife's real estate, undeclared by statute and shattered by the Married Women's Acts, can be destroyed by any valid transfer the wife may choose to make. She may sell, mortgage, exchange, even give away every inch of her land during her lifetime, or devise it at her death to friend or foe, and it is thereby freed from any interest of the husband. The practical result is that a married man cannot transfer any of his realty and give good title without his wife consenting and joining in the transfer—while a wife can transfer her realty and give good title without even the knowledge of her husband.

It is true that if a wife does not in any way dispose of her realty either during life or by testament, the husband will at her death have a life estate in all her remaining realty, while her dower life estate would have extended only to one-third of his realty—but that he takes any estate at all is due solely to her wish, or omission to deed or devise, while nothing he can do can impair her dower.

In **Albany Co. Savings Bank** v. **McCarty,** 149 N. Y. 71, Judge Vann, writing the opinion of the court, says at page 85:

> " * * * since the acts allowing married women to sell and devise their lands, a husband's right as tenant by the curtesy initiate, * * * consists simply of a **status,** which is never a vested right and is not separately alienable during coverture, but **may be modified or annulled at any time** before it becomes consummate by the death of the wife. * * * it is not an estate, but a simple possibility or expectancy like that of an heir apparent. Either may be destroyed at will by the owner of the fee. * * * **Like 'the next cast of a fisherman's net,' it involves a possibility** but no actual or potential interest."

Similarly, in **Matter of Starbuck,** 137 A. D. 866 (Second Department, Thomas, J.) affd. 201 N. Y. 531, the court says, at pages 868 and 869:

> "She was capable of forestalling and preventing an estate, * * *. He is indebted to such forbearance for obtaining what the law provides for him, but nothing more." And at page 870:

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"So the law gave Mrs. Starbuck power to alienate and thereby defeat the estate by the curtesy, * * *. **The husband's estate is contingent upon the omission of the wife to dispose of her property.**"

On the other hand, the language of the Court, per Peckham, J., in **House v. Jackson,** 50 N. Y. 161, shows the inviolability of dower:

"It is a settled rule of the common law, laid down in the elementary books, that after dower has once attached, **it cannot be extinguished or suspended by any act of the husband alone,** in the nature of alienage or charge. The rule is adopted in much broader language in our statute." (p. 165)

Judge Herrick, writing the opinion of the court in **Fern** v. **Osterhout,** 11 A. D. 319 (3rd Department), says, at page 323:

"Courts have always been tender of the right of dower, and solicitous to protect it. Coke said 'that three things be favored in law—life, liberty and dower' (1 Coke upon Litt., 2nd Am. ed., 14). The right of dower can only be cut off or barred by the clear unequivocal act of the dowress herself, or by proceedings where such right of dower is clearly and legally brought in question."

The text writers attest the same rule.

Reeves, **Real Property,** vol. 1, sec. 457.

Fowler, **Real Property Law of New York** (3rd ed.), 153.

There is another respect in which dower is superior to curtesy: the latter can attach only after the birth of issue, and birth alive, while the former attaches by reason of the marriage alone and without birth of issue. **Matter of Starbuck,** 137 App. Div. 866, affd. 201 N. Y. 531.

1 Tiffany, **Real Property,** 486.

1 Reeves, **Real Property,** sec. 474.

In these several respects, then, does the New York law prefer the woman and her dower to the man and his corresponding curtesy.

2. **Support of spouse and children—civil liability.**

A man is bound to support his wife and children if able to; but a woman is never bound to support her husband and with few exceptions is not bound to support her child. Thus recovery can be had against the husband for necessaries supplied even against his wish to the wife and minor children unless it is shown that he has already adequately provided her with such necessaries or money with which to buy them. But recovery can never be had against a woman for necessities supplied to her husband—unless she makes a special express contract to pay for them individually and out of her own property.

A comparison of the two cases of **Hazard** v. **Potts,** 40 Misc. 365 (App. Term) and **Button** v. **Weaver,** 87 A. D. 224 (4th Department), will illustrate the liability of the man and the freedom from liability

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of the woman. Both actions were for necessary services of a physician; the former was to recover from the wife for services rendered her husband and family, the latter to recover from the husband for services rendered to the wife. Recovery was allowed in the latter but not in the former case.

In **De Brauwere** v. **De Brauwere,** 203 N. Y. 460, a wife who had been supporting herself and her children out of her own money, consisting of her earnings and inheritance, sued her husband for the money so expended, and it was held she could recover, the Court saying, page 463:

> "At common law the personal property of the wife and all her earnings belonged to the husband. In this state, however, her marital disabilities have been wholly removed by statute, and the law now presumes that a married woman is alone entitled to any wages, earnings or any other remuneration for services which she renders."

The Court in **Cromwell** v. **Benjamin,** 41 Barb. 558, says, at page 560:

> "It is a settled principle in the law of husband and wife, that by virtue of the marital relation, and in consequence of the obligations assumed by him upon marriage, the husband is legally bound for the supply of necessaries to the wife so long as she does not violate her duty as wife; that is to say, so long as she is not guilty of adultery or elopement. * * * he is legally liable for necessaries furnished to her by tradesmen, **even though against his orders.**" (Black type the Court's.)

Smith v. **Allen,** 1 Lansing 101, 105.

> "Goods purchased by the wife upon credit for family use, are the goods of the husband, and the husband, and not the wife, is liable to pay for them, unless there is some special agreement between the parties, * * *."

Lindholm v **Kane,** 92 Hun 369 (1st Dept.), was an action against a wife to recover the price of groceries furnished for family use, and judgment against her was reversed.

It was said in **Gladding** v. **Follett,** 2 Dem. Surr. 58 (affd. 30 Hun 219, affd. 95 N. Y. 652), at page 66:

> "The obligation to support and maintain infant children is by common law, and it requires the father to support his minor children if he be of sufficient ability, even though they have property of their own, but this common law obligation does not extend to the mother."

In **Ruhl** v. **Heintz,** 97 A. D. 442 (2nd Dept.), it was held that the wife was not liable for board furnished to herself, her husband, and her daughter, and consequently her trunks could not be held by the landlady for a lien for the board.

Recovery may be had from the husband not only for necessaries

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furnished the wife and family, but also for money loaned to a wife and used by her to purchase necessities.

Kenny v. **Meislahn**, 69 A. D. 572 (2d Dept.).

The authors of "Cyc", vol. 21, say:

> "One of the prime duties arising out of the marital relation is the duty of the husband to support and maintain the wife, although the wife may have a separate estate" (pp. 1151, 1152), and "Coupled with the common-law duty of the husband to support the wife is his liability for her necessaries suitable to his circumstances and condition in life. Should he fail in supplying her with such suitable necessaries, she may, while cohabiting with him, or upon his desertion of her, bind him by her contracts with third persons for such a purpose" (pp. 1215, 1216). Also, "Primarily the duty to support, maintain, and educate the children rests upon the father; and during the lifetime of the father the mother is not bound to support the children" (vol. 29, p. 1606).

The phrase—"necessaries"—for which a husband is liable is interpreted broadly, and is not limited to the bare necessities of life. It is thus defined by the Court of Appeals in the **De Brauwere** case, **supra**, at p. 464:

> "The obligation * * * is to be measured with reference to his pecuniary ability, honestly exercised, or his pecuniary resources; that is to say, those things might properly be deemed necessaries in the family of a man of generous income or ample fortune which would not be required in the family of a man whose earnings were small * * *."

And, in a late decision, Judge Scott says, in **Wickstrom** v. **Peck**, 163 A. D. 608 (1st Dept.)—an action against a husband to recover $15,000 for gowns furnished to his wife:

> "Under these circumstances, although the debts incurred by the wife for clothing might seem large to men of moderate means, it does not follow that a jury might not find that the clothes purchased were no more numerous or expensive than were suitable according to the situation in life of defendant and his wife as established by him. If so they were necessaries within the legal acceptation of that term, and the husband was liable to whomsoever furnished them to the wife, no matter to whom the credit was originally extended" (p. 610).

3. **Support of spouse and children—criminal liability.**

Not only does this legal obligation of the husband and freedom from liability of the wife manifest itself when a civil action is brought by one who has furnished necessaries or money therefor, but the criminal law is strong to smite the husband and father but does not constrain the wife and mother.

Section 921 of the Code of Criminal Procedure provides that when a father absconds from his children, or a husband from his

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wife, leaving any of them chargeable or likely to become chargeable upon the public, a warrant may issue to seize any real or personal property of the husband or father. And under section 923 the court may direct a sale of the property so seized, and the application of the proceeds to the maintenance of the wife or children.

But if a woman "absconds" from her husband leaving him a charge upon the public no such penalty is provided; if a mother so abandons her children she is subject to such penalty only in two instances, first, when the father is dead, and, second, when she is "living separate from the husband" (Section 921, Code Criminal Procedure).

Thus, Chief Judge Parker, in **Goodman** v. **Alexander,** 165 N. Y. 289, writing the opinion of the court, says, at page 291:

> "Section 921 of the Code of Criminal Procedure in substance provides that if a father, a widowed mother, or a mother living apart from her husband absconds, leaving children a charge on the public, his or her property is liable for the support of such children."

By section 921 it is also provided that whenever a child has been committed to an institution the father may be arrested and, if found able, required to contribute such sum as the court or a magistrate shall order toward the maintenance of the child. But there is no provision for the arrest of the mother in such circumstance, or requiring her thus to contribute to the support of her child.

Also, by section 685 of the New York City Charter every man who abandons his wife or children and refuses to support her or them or threatens so to abandon wife or child, may be arrested, and an order may be made that he pay a named sum weekly for their support. And anyone can make the complaint to set in motion such a procedure. **People** v. **Meyer,** 12 Misc. 613 (Gen. Sess., Goff, Recorder).

But there is no similar provision for a woman who abandons her child or an unfortunate or disabled husband.

4. **Civil arrest—before final judgment.**

A man who is a defendant may be arrested before final judgment in a number of actions—among others the following: to recover a fine; for damages for a personal injury or injury to property; for wrongful conversion of property; breach of promise to marry; misconduct in office or in professional employment; to recover money or property misapplied by a public officer or by anyone in a fiduciary capacity; on a contract fraudulently contracted or where the defendant has disposed of or is about to dispose of property with the intent to defraud creditors (Code Civil Procedure, sec. 549). By

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section 550 he may also be arrested in an action to require performance of an act the refusal to perform which would be a contempt, where the defendant is a non-resident or is about to leave the state.

A woman, however, can be arrested in a civil action only in two cases—that last above mentioned, provided for by section 550, and in an action for a wilful injury (Code Civil Procedure sec. 553).

5. **Civil arrest—after final judgment.**

After execution on a judgment has been issued and returned unsatisfied, the arrest of a male defendant, called a "body execution" may be had, roughly, in all cases where an arrest at the beginning of the action could have been had, except the case mentiond in section 550 (Code Civil Procedure, sec. 1487). But by section 1488 it is provided:

> "But an execution cannot be issued against the person of a woman, unless an order of arrest has been granted and executed in the action, and, if it was executed against the judgment debtor, has not been vacated."

6. **Exemption of property from execution.**

When an action has been brought against a woman, judgment recovered, and execution issued, there are many articles of property that are exempt from seizure on the execution. These are listed at length in sections 1390 and 1391 of the Code of Civil Procedure, and include food and fuel for family use, wearing apparel, furniture, working tools, and library, to a certain value, except that the last named exemptions are allowed only in certain kinds of actions. These exemptions are allowed to a woman, to the value and in the kinds of actions named, whatever her circumstances may be. To a man, however, they are only allowed when he is the provider for a family. Thus in **Fink** v. **Fraenkle,** 39 N. Y. St. Rep. 194 (City Ct. Gen. Term), a motion was made to punish a doctor against whom judgment had been recovered, for refusing to deliver his furniture, books and surgical instruments. The testimony showed that he was unmarried and did not provide for any family, and the decision was that the motion should have been granted. The court in its opinion particularly calls attention to the fact that if the defendant had been a woman this property which the man was to be punished for not turning over would have been entirely exempt from seizure, and a woman therefore could not have been compelled to turn it over or punished for not doing so.

7. **Obligation to pay alimony on divorce or separation.**

When an action is brought for divorce or separation the court may make an order requiring the husband to pay during the pen-

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dency of the action sufficient amounts to enable the wife to carry on the action, and for maintainance of herself and the children, if any (Code Civil Procedure, sec. 1769). In the final judgment, or by previous order, the court must, where the action is brought by the wife, provide for her continued support by her husband (Sec. 1771). But there is no provision anywhere requiring the wife under any circumstances, either during or after the action, to provide for or contribute to her husband's support, though she and not he be the guilty party, and though she be rolling in wealth and he almost penniless and crippled or ill.

1 Bishop, **Marriage and Divorce,** sec. 1387; 12 **Columbia Law Review** 638; 14 **Cyc** 744.

It was said in the case of **Cohen** v. **Cohen,** 11 Misc. 704, at page 705:

> "A careful consideration of the papers submitted satisfies me that the plaintiff is absolutely without means; but his poverty is no defense to the application." (The application was by the wife for counsel fees.)

Section 1772 of the Code provides that the husband may be required to give security to pay alimony; section 1773 provides for punishment for contempt if there is a default in payment and it cannot be enforced by taking his property; the sections 753 **et seq.** of the Judiciary Law (Consol. L. ch. 30) provide for imprisonment for non-support.

8. **Exemption from compulsory military service.**

It is well known that women are not subject to the military service that the state may demand of men. Section 8 of the Military Law (Consol. L. ch. 36) authorizes the governor to order into active service any part of "the militia" in case of insurrection, invasion, turmoil, **et cetera.** And by section 1 of the Law "the militia" is defined as consisting of "all able bodied **male** citizens" between certain ages, with certain enumerated exceptions.

9. **Exemption from jury service.**

It is equally well known that in this state women are not subject to the jury duty which is required of men. Articles 16, 17 and 18 of the Judiciary Law (Consol. L. ch. 30) detail the method of drafting men to serve on jury. Sections 646 and 551 provide that a person drawn and notified to attend as a trial juror who fails to attend shall be fined from fifty to two hundred and fifty dollars in New York County, and from ten to twenty-five dollars in other counties; while section 648 reads:

> "Where a person, duly drawn and notified, fails to attend and serve, at a term of a court of record, as required by law, with-

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out having been excused, the court, besides imposing a fine, as prescribed in section six hundred and forty-six, may direct the sheriff to arrest him, and bring him before the court; and, when he has been so brought, it may, in its discretion, compel him to serve."

This compulsory service may amount to twelve days of actual service in a year, or even more, for the section of the law that provides for discharge after a certain number of days' service reads:

> "A person who has actually served as a trial juror, in a court of record of the state, within that county (New York), twelve days within a jury year, is entitled to be discharged by the court, except that he shall not be discharged until the close of the trial in which he is serving, when the twelve days expire." (Section 641 of the Judiciary Law.)

The clause that exempts women from this service is contained in sections 502 and 598, the latter for New York County and the former for the other counties, and declares that only "a **male** citizen" may be drawn.

10. **Widows' pensions.**

Chapter 228 of the Laws of 1915 added to the General Municipal Law (Consol. L. ch. 24) a new article, 7-A, comprising sections 148 to 155 inclusive, popularly called the "Widows' Pensions Act." This established local boards of child welfare throughout the State, and authorized them to "grant allowances to widowed mothers with one or more children under the age of sixteen years." (Sec. 148). Some of the members of each board must be women. (Secs. 149 and 150). The allowances granted are to be paid out of moneys authorized to be appropriated by the local authorities and included in the tax levy. (Secs. 153 and 154).

11. **Exemption of insurance payable to the widow.**

Section 52 of the Domestic Relations Law (Consol. L. ch. 14) reads:

> "A married woman may * * * cause the life of her husband to be insured for a definite period, or for the term of his natural life. Where a married woman survives such period or term she is entitled to receive the insurance money, payable by the terms of the policy, as her separate property, and free from any claim of a creditor or representative of her husband, except, that where the premium actually paid annually out of the husband's property exceeds five hundred dollars, that portion of the insurance money which is purchased by excess of premium above five hundred dollars, is primarily liable for the husband's debts."

And this section exempts not only a policy taken out by the wife on her husband's life, but equally a policy taken out by the

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husband on his own life and payable to the wife. **Guardian Trust Co.** v. **Strauss,** 139 A. D. 884 (1st Dept.) affd. 201 N. Y. 546; and cases **infra.**

The extent to which this exemption for the benefit of the widow has been carried is well illustrated by excerpts from the opinions of the court in two cases. In **Brummer** v. **Cohn,** 86 N. Y. 11, Judge Andrews, writing the opinion of the court, said, at page 14:

> "But the act of 1840 did secure to the wife, the sole benefit of an insurance on the life of her husband, procured by or for her and in her name, in case she survived her husband, free from any claim by him, or his representatives or creditors, subject to the limitation that the annual premium paid should not exceed a specified sum. * * * The act is remedial, and was passed for the benefit of married women and their children, and the intention of a married woman in insuring the life of her husband, to avail herself of its provisions, is inferable from its beneficial nature".

And in **Baron** v. **Brummer,** 100 N. Y. 372, the court said, at page 375:

> "Under these various provisions it was the intention of the legislature, as settled and determined by the courts in the cases already cited, that such policies should not be subjected to the lien of creditors either of the husband or the wife; as to the former by the express words of the statute, and as to the latter by the determination of the courts, and there is no ground for claiming that either the policy or the proceeds which might arise from the same before such payment is made, are subject to be reached in advance by a creditor, or that the policy can be assigned and held by the decree of a court of equity for the benefit of creditors, until it becomes due and payable."

As is evident from the above quotations, no such broad exemption exists in favor of men.

12. **Capacity to bequeath.**

Women are given power to transfer personal property by will at an earlier age than men. Section 15 of the Decedent Estate Law (Consol. L. ch. 13) states:

> "Every male person of the age of eighteen years or upwards, and every female of the age of sixteen years or upwards, of sound mind and memory, and no others, may give and bequeath his or her personal estate, by will in writing."

13. **House of detention.**

Section 99 of the County Law (Consol. L. ch. 11) provides that a suitable place or places other than the jail may be purchased or leased for the keeping and care of women and children charged with minor crimes. But for men there is no such provision for special houses of detention free from the criminal atmosphere of the jail.

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SECOND.

LAWS THAT FURNISH SPECIAL PROTECTION TO WOMEN.

1. Labor laws—in general.

We in New York are justly proud of the net work of shielding statutes which surrounds the "woman in industry". The close sympathy of the highest courts with the efforts of the legislators in weaving this protection may be best evidenced by quotations from two opinions in, respectively, the United States Supreme Court, and the New York Court of Appeals.

The celebrated recent case of **Muller** v. **Oregon,** 208 U. S. 412, upheld a statute of Oregon which provided that no female should be employed in any factory or laundry for more than ten hours in any day. Mr. Justice Brewer wrote the opinion of the Court, and said, pages 420-422:

> 'The legislation and opinions referred to in the margin may not be, technically speaking, authorities, and in them is little or no discussion of the constitutional question presented to us for determination, yet they are significant of a widespread belief that woman's physical structure, and the functions she performs in consequence thereof, justify special legislation restricting or qualifying the conditions under which she should be permitted to toil. * * * That woman's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence is obvious. This is especially true when the burdens of motherhood are upon her. Even when they are not, by abundant testimony of the medical fraternity continuance for a long time on her feet at work, repeating this from day to day, tends to injurious effects upon the body, and as healthy mothers are essential to vigorous offspring, the physical well being of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race. * * * she has been looked upon in the courts as needing especial care that her rights may be preserved. Education was long denied her, and while now the doors of the school room are opened and her opportunities for acquiring knowledge are great, yet even with that and the consequent increase of capacity for business affairs it is still true that in the struggle for subsistence she is not an equal competitor with her brother. Though limitations upon personal and contractual rights may be removed by legislation, there is that in her disposition and habits of life which will operate against a full assertion of those rights. She will still be where some legislation to protect her seems necessary to secure a real equality of right. * * * she is properly placed in a class by herself, and legislation designed for her protection may be sustained, even when like legislation is not necessary for men

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and could not be sustained. * * * her physical structure and a proper discharge of her maternal functions—having in view not merely her own health, but the well-being of the race—justify legislation to protect her from the greed as well as the passion of man. * * * The two sexes differ in structure of body, in the functions to be performed by each, in the amount of physical strength, in the capacity for long-continued labor, particularly when done standing, the influence of vigorous health upon the future well-being of the race, the self-reliance which enables one to assert full rights, and in the capacity to maintain the struggle for subsistence. This difference justifies a difference in legislation and upholds that which is designed to compensate for some of the burdens which rest upon her."

To the same effect are

Miller v. **Wilson,** 236 U. S. 373.

Bosley v. **McLaughlin,** 236 U. S. 385.

The latest word on the subject from the lips of the courts of our own state is the case of **People** v. **Charles Schweinler Press,** N. Y. Law Journal, April 6, 1915 (not yet reported), upholding section 93b of the Labor Law (Consol. L. ch. 31) as amended by L. 1913, ch. 83, which provides,

"Period of rest at night for women. In order to protect the health and morals of females employed in factories by providing an adequate period of rest at night no woman shall be employed or permitted to work in any factory in this State before six o'clock in the morning or after ten o'clock in the evening of any day."

The court said, per Hiscock, J.:

"Protection of the health of women is a subject of special concern to the State. However confident a great number of people may be that in many spheres of activity, including that of the administration of government, woman is the full equal of man, no one doubts that as regards bodily strength and endurance she is inferior and that her health in the field of physical labor must be specially guarded by the State if it is to be preserved and if she is to continue successfully and healthfully to discharge those peculiar duties which nature has imposed upon her. This proposition is fully recognized and stated in **Muller** v. **Oregon.** * * * And if any further brief evidence of the truth of the proposition were necessary it would be found in the many statutes which have been adopted in this State, without question of their constitutionality, particularly designed to protect and preserve the health of women when engaged in various kinds of physical labor. * * * surely it is a matter of vital importance to the State that the health of thousands of women working in factories should be protected and safeguarded from any drain which can reasonably be avoided. This not only for their own sakes but, as is and ought to be constantly and legitimately emphasized, for the sake of the children

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whom a great majority of them will be called on to bear and who will almost inevitably display in their deficiencies the unfortunate inheritance conferred upon them by physically broken-down mothers. * * * Neither is it an effective objection to a statute if some of those who will be protected by its provisions oppose such protection, for the State has such an interest in the welfare of its citizens that it may, if necessary, protect them against even their own indifference, error or recklessness."

2. **Labor laws—protection as to occupations and places of work.**

Labor Law section 171, as amended by ch. 145 L. 1913, provides that "women or children shall not be employed or permitted to work in the basement of a mercantile establishment," unless permission is granted by the labor commissioner on showing that the basement is sufficiently lighted and ventilated, and is in good sanitary condition.

Section 131 provides that "no female shall be employed, permitted or suffered to work in any mine or quarry in this state."

Section 93, subdiv. 2, as amended by ch. 464 L. 1913, provides that no female shall be employed in any factory in this state in operating or using any emery, or other abrasive, or emery or buffing wheel, where articles of the baser metals or of iridium are manufactured. Subdivision 4 provides that no female shall be permitted to work in any brass, iron or steel foundry, at or in connection with the making of cores where the oven in which the cores are baked is located and is in operation in the same room or space in which the cores are made; and the partition separating the oven must be so constructed that the gases and fumes from the core oven will not enter the room or space in which the women are employed. And the industrial board shall have power to adopt rules regulating the rooms and the weight of the cores that may be handled by women, "so as to protect the health and safety of women employed in core rooms."

3. **Labor laws—certain special protection to young and immature women.**

Section 93, subdiv. 2, **supra**, also provides that no female under the age of sixteen shall be employed or permitted to work in any capacity where such employment compels her to remain standing constantly; and no woman under twenty-one years of age shall be permitted or directed to clean machinery while in motion.

Section 220 as amended by ch. 618, L. 1913, provides that no girl under sixteen years of age, shall in any large city sell or expose or offer for sale newspapers, magazines or periodicals in any street or public place.

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4. **Labor laws—hours of labor.**

Section 93b is quoted in full above, in the notation of its interpretation in the **Charles Schweinler Press** case, and provides that no woman shall be permitted to work in any factory before six o'clock in the morning nor after ten at night.

Section 161, subdiv. 2, as amended by ch. 331 L. 1914, provides that no female shall be permitted to work in or in connection with any mercantile establishment more than six days or fifty-four hours in any one week, or more than nine hours in any one day, unless for the purpose of making a shorter work day of some one day of the week; or before seven o'clock in the morning or after ten o'clock in the evening of any day; but this does not apply to employment of women over sixteen at Christmas time. Subdivision 3 provides that not less than forty-five minutes shall be allowed for the noonday meal of the employees in any mercantile establishment or analogous employments.

Section 77 subd. 3, as amended by ch. 465 L. 1913, provides that no woman shall be employed or permitted to work in any factory in the state more than six days or fifty-four hours in any one week; nor more than nine hours in any one day; and no female minor under the age of twenty-one years shall be employed or permitted to work in any factory before six o'clock in the morning or after nine o'clock in the evening, except in canneries.

5. **Labor laws—miscellaneous protections.**

Section 170 provides that seats shall be maintained in mercantile establishments for the use of female employees, "at least one seat for every three females employed, and the use thereof by such employees shall be allowed at such times and to such extent as may be necessary for the preservation of their health." And "if the duties of the female employees, for the use of whom the seats are furnished, are to be principally performed in front of a counter, table, desk or fixture, such seats shall be placed in front thereof; if such duties are to be principally performed behind such counter, table, desk or fixture, such seats shall be placed behind the same."

Section 17, as amended by ch. 197 L. 1913, makes a similar provision for seats for females employed in a hotel or restaurant, and the seats must have proper backs where practicable. And the requirement of backs to the seats for women factory workers is added in the amendment of 1913, reading that "Where females are engaged in work which can be properly performed in a sitting posture, suitable seats, with backs where practicable, shall be supplied in every factory for the use of all such female employees and permitted to be used at such work." The industrial board is given

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power to determine when seats, with or without backs, are necessary and the number that must be supplied.

Section 168d, as amended by ch. 183 L. 1914, requires dressing rooms to be furnished for the use of the women employees in every mercantile establishment where more than five women are employed; and each room shall be properly ventilated, lighted, and heated, and supplied with seats—and where more than ten women are employed the dressing room shall have floor space of not less than sixty square feet and shall have at least one window opening to the outer air.

Section 88 subd. 3, as amended by ch. 366 L. 1914, makes similar provision for dressing rooms in factories where women are employed.

Section 93a, as amended by ch. 331 L. 1912, declares:

> "It shall be unlawful for the owner, proprietor, manager, foreman or other person in authority of any factory, mercantile establishment, mill or workshop to knowingly employ a female or permit a female to be employed therein within four weeks after she has given birth to a child."

6. Protection of a woman's good name.

Section 1906 of the Code of Civil Proedure makes an exception to the general rule of slander in favor of women, stating:

> "In an action of slander, brought by a woman, for words imputing unchastity to her, it is not necessary to allege or prove special damages."

The editors of "Cyc," vol. 25, p. 318, show that this is a special clause for the protection of women when they state:

> "In several of the states where the statute makes words imputing want of chastity actionable **per se**, the statute operates only in favor of women, and a man has no right of action, unless the words impute a crime," citing in support of that proposition a number of New York cases.

7. Women under arrest for minor offenses.

Under section 90 of the General City Law (Consol. L. ch. 21) the mayor may designate one or more station houses in the city for the detention and confinement of all women under arrest in the city. "Respectable women who shall be known as police matrons" shall be appointed for each such station house for women; and "No woman shall be appointed a police matron unless suitable for the position and recommended therefor in writing by at least twenty women of good standing, residents of the city." (Section 91.)

Section 94 provides that women under arrest shall have separate accommodations.

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8. **Separate night court for women.**

Section 77 of the Inferior Criminal Courts Act (Ch. 659 L. 1910) as amended by ch. 372 L. 1913, and ch. 447 L. 1914, provides that a separate night session of a city magistrates court shall be held exclusively for the hearing of cases and proceedings against women, and shall be held in a different building from that in which the men's night court is held. The section continues:

> "There shall be established * * * a place of detention, under the jurisdiction of the commissioner of correction, convenient to the night court for women, where women may be detained both before and after being heard, and in such detention place the young and less hardened shall be segregated, so far as practicable, from the older and more hardened offenders." And, "Any magistrate, pending adjournment of the trial, or after conviction pending investigation before imposition of sentence, may, in his discretion, parole in the custody of the probation officer any female arraigned in any one of the magistrates' courts for any offense other than a felony."

9. **Attendants for feeble-minded women.**

The State Charities Law (Consol. L. ch. 55) section 455, provides that a feeble minded woman in transit to or from a state institution shall have female attendants.

10. **Protection from sexual crimes.**

It is declared in the Penal Law (Consol. L. ch. 40), section 2010 thereof, that if a man have sexual intercourse with a female not his wife under the age of eighteen years he shall be guilty of rape in the second degree, even though the woman in fact fully consented and was of sound mind, and no violence or threat was used.

Under section 2175,

> "A person who, under promise of marriage, seduces and has sexual intercourse with an unmarried female of previous chaste character, is punishable * * *."

The hideous crime of compulsory prostitution of women is at length defined and punishment therefor declared in section 2460.

11. **Abduction of female.**

Punishment is provided under Penal Law section 70 for one who takes, receives, employs, harbors or uses a female under eighteen for prostitution; or, not being her husband, for sexual intercourse; or, "without the consent of her father, mother, guardian or other person having legal charge of her person, for the purpose of marriage." Also, for one who entices an unmarried female, of any age, of previous chaste character, for sexual intercourse; or takes or detains a female unlawfully against her will to compel her to marry him or another, or to be defiled; or being a parent of a female under eighteen, consents to such act by another.

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Under the case of **People** v. **Seeley,** 37 Hun 190, 192, affd. 101 N. Y. 642, "it is not necessary to constitute the crime that the accused should in any case use any force or practice any fraud or deception, and that it is sufficient, within the statute, if the female is induced by his request, advice or persuasion." (See also Penal Law sec. 1250, **infra,** relating to kidnapping.)

12. **Regulations for employment agencies.**

No one conducting an employment agency shall send any female to any house kept for immoral purposes or a gambling house or a place where she will be permitted to sell intoxicating liquors. And "no licensed person shall send out any female applicant for employment without making a reasonable effort to investigate the character of the employer". (General Business Law, Consol. L. ch. 20, sec. 190, as amended by ch. 700 L. 1910.)

13. **Physical examination of woman to be by one of her own sex.**

Section 873 of the Code of Civil Procedure authorizes the court, in an action for personal injuries, to order a physical examination of the plaintiff, "and if the party to be examined shall be a female she shall be entitled to have such examination before physicans or surgeons of her own sex."

THIRD.

CLAIMED DISCRIMINATIONS AGAINST WOMEN, WHICH DO NOT DISCRIMINATE.

1. **Custody of children.**

It is frequently asserted by suffragists that a mother has not as full a right to the guardianship of her child as has the father, and that in general our laws of guardianship discriminate against the mother. This claim is unfounded—not only under present New York statutes and decisions, but throughout the United States.

The cornerstone of "equal guardianship" in New York is section 81 of the Domestic Relations Law (Consol. L. ch. 14), which reads:

> "A married woman is a joint guardian of her children with her husband, with equal powers, rights and duties in regard to them."

The court in its opinion in **People ex rel.** v. **Beaudoin,** 126 A. D., 505 (3rd Dept., affd. 193 N. Y. 611, without opinion), after quoting the statute above given, says, p. 507:

> "In the face of the statute alluded to there is no force in the contention of the respondents that, before his death, the father of Robert gave him to them, for this could not lawfully be done without the consent of his mother."

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In that case the custody of the child was given to the mother, though she was not able so adequately to support him as were the grandparents with whom he was then living.

In re Lamb's Estate, 139 N. Y. Supp., 685, is sometimes cited as standing for the proposition that the father's right to guardianship is superior. In this very case, however, the Surrogate (after discussing the English common law) appointed, as guardian of the infant's estate, the mother's sister, instead of a person proposed by **the father himself;** and as guardians of the person of the child appointed this same aunt jointly with a stranger of the Surrogate's selection, refusing the claim of the father, who had applied to be appointed guardian. There is nothing in that case that impairs the mother's equality in the guardianship of her child.

There is no rule more well established than that it is the welfare of the child that controls the selection of a guardian—and, if the child's own interests demand, the custody over him will be taken away from either parent and awarded to another.

As long ago as the year 1816, Chief Justice Thompson announced in **Matter of Waldron,** 13 Johns. 418, 421, as the rule running through the American and earlier English cases:

> "It is to the benefit and welfare of the infant to which the attention of the court ought principally to be directed."

And from time to time ever since, our higher courts have stated the same rule.

> "The paramount consideration is the welfare of the children." **People ex rel.** v. **Gerow,** 136 A. D. 824, 829 (2d Dept., Woodward, J.).
>
> " * * * The welfare of the child is the chief object to be attained, and must be the guide for the judgment of the court." **People ex rel.** v. **Walts,** 122 N. Y. 238, 242.
>
> "The one consideration in determining a proceeding of this character is the welfare of the child." **People ex rel. Winston** v. **Winston,** 31 A. D. 121, 124 (1st Dept., Ingraham, J., now P. J.).

In fact, if there is any preference shown as between the father and the mother in the selection of a guardian, it is generally the mother who is preferred, especially for daughters or for younger children. Thus the court in **Perry** v. **Perry,** 17 Misc. 28, says, at pages 28 and 29:

> "It is the settled law of this state, that, in determining the custody of infants between the father and mother, their welfare, and not the supposed rights of the parents, is the controlling principle. Nor in the competition does the father start with any superior title; for, whatever was the notion in former times and other jurisdictions, at this day and in this country the claim of the mother to her offspring is at least of equal potency.

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'By the law of nature the father has no paramount right to the custody of his child. * * * All other things being equal, the mother is the most proper person to be intrusted with the care of a child of this tender age. The law of nature has given to her an attachment for her infant offspring which no other relative will be likely to possess in an equal degree.'"

This statement is approved in Battershall, **Domestic Relations,** 217.

It is stated in 9 **Am. & Eng. Encyc. L.,** 868, that on the divorce of the parents "the mother is usually preferred as a custodian for the daughters and for young children in need of personal care and attention, or where a child is not in good health."

The recent case of **Ullman** v. **Ullman,** 151 A. D., 419 (2nd Dept.), involved an appeal by the wife from the denial of her motion for custody of the child. The order was affirmed on the technical ground that the application had been made at too early a stage of the proceedings, but the Court, in considering whether in general the husband or wife should have the custody, says, at page 424: "The child at tender age is entitled to have such care, love and discipline as only a good and devoted mother can usually give." And in **People ex rel.** v. **Elder,** 98 A. D. 244 (2d Dept.) the Court, after saying that the father and mother have, other things being the same, equal rights to the guardianship of the children, concludes that the mother is to be preferred because the father must be at business all the day.

If the court award the custody of a child to the mother it shall be a felony for the father to kidnap the child, and vice versa; for by Penal Law section 1250, it is provided that a person who wilfully "leads, takes, entices away, or detains a child under the age of sixteen years with intent to keep or conceal it from its parents, guardian or other **person having the lawful care or control thereof"** or for a reward for return, or who seizes, confines, inveigles, carries away, etc., another "is guilty of kidnapping, which is a felony and is punishable, if a parent of the person kidnapped, by imprisonment for not more than ten years," and if not a parent, for from ten to fifty years.

2. **Religious training of children.**

Another statement occasionally made is that in matters of religious training the father's will is supreme. No statute has been cited, for that proposition, but two cases are named as establishing such a rule. They are: **Matter of Jacquet,** 40 Misc. 575 (Monroe County, Benton, Surrogate), and **Matter of Lamb, supra.**

The latter case was an application by the maternal aunts for

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letters of guardianship. The mother was dead, but she had been, and her family were Baptists, while the father and his family were Roman Catholics. Surrogate Fowler, after deciding, **ut supra**, that if the welfare of the child demands it the custody over him can be given to a person other than a parent, even against the wish of the surviving parent (in this case the father), continues (p. 689): "It is the father and not the aunts who has the right to determine the religious belief of an infant under fourteen years of age." Note that he does **not** say that it is the father and not the mother, but only that it was the father **and not the aunts.** The mother was dead. And is there anything that could possibly be construed as a discrimination against the mother in allowing the father to decide, not as against her, but as against other and collateral relatives? As above stated, the infant's property was intrusted to the mother's sister, and the care of the child given to her jointly with a stranger of the Surrogate's own selection—neither the father nor the one he suggested was allowed any guardianship whatsoever.

The other case, **Matter of Jacquet, supra,** is cited by Mr. Gilbert E. Roe (1) as, "held that this father's express wish to have his children brought up in the Catholic faith should prevail over the desire of the mother to have them brought up in the Protestant faith." It does not stand for that proposition. The mother was at the time of the proceeding insane, and an inmate of an institution, and consequently was incapable of entertaining, let alone expressing, a desire as to which religion the children be reared in. And the Court apparently does not find that the mother **ever** desired to have them brought up as Protestants. There is some evidence that she so remarked to certain people. The Court says, however, "It is also in evidence that to Father Sinclair she expressed a very earnest hope that the children would be brought up in the Catholic faith." (p. 578.) And (p. 579), "**Upon the preponderance of the evidence** as presented here, principle and authority impel this Court to commit these children to Catholic guardianship until maturity * * *."

3. **Persons who must be notified of application for guardianship.**

Another statement of Mr. Roe's—and one which has been widely quoted—may warrant attention. He says (2): "the husband may secretly and without notice to the wife, where they are living apart, have himself appointed guardian of their minor children, while if the wife under the same circumstances make an application for guardianship, ten days' notice thereof must be given the husband,

(1) "Discriminations against Women in the Laws of New York," Gilbert E. Roe, page 11.

(2) Op. cit., page 6.

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with full opportunity to defend." In all fairness it must be said that the section of the Code of Civil Procedure which he cites and relies on (old section 2823), which was then in force, would seem to warrant that interpretation. But the case of **Matter of Drowne,** 56 Misc. 417, decided six years previous, had held that in spite of the language of this Code section, the "equal guardianship" clause of the Domestic Relations Law (section 81, quoted above) necessitated notifying the mother. Letters of guardianship issued to the father without such notice were revoked, the Court saying, after quoting the above section of the Domestic Realtions Law:

> "This effected a change in the law and vested in the mother a substantial legal right to the custody of the person of her child **co-equal with that of her husband.** This right could not be taken away from her or cut down in any degree by the order or decree of any court **without notice to her and opportunity for making defense.** * * * In the present case no such notice was given, and on that ground alone * * * the decree, so far as it awards guardianship of the person of the infant to the respondent (the father) is vacated * * * ."

But the question whether in 1913 notice to the mother was necessary is now academic, for in 1914 this Code section, with the whole Surrogates Act, was revised and the present sections 2646 and 2647, counterparts of the old section 2823, provide for the same notice to the wife as to the husband, and the most ardent suffragist could find in the sections no discrimination against women.

In fact, now that we are considering the technicality of what parties must be given notice of application for guardianship letters, it might be mentioned that it is provided by subdivision 1 and 2 of section 2647 that on presentation of a petition for the appointment of a guardian, citation (notice) shall issue to the parents or grandparents and to the ones with whom the infant resides, while subdivision 4 creates a discrimination in favor of a married woman in that on her petition, citation need only issue to her husband.

4. **Persons entitled to letters of administration.**

Section 2588 of the Code of Civil Procedure, reads, in part:

> "Administration in case of intestacy must be granted to persons entitled * * * in the following order: * * * If several persons have an equal right to administration, they must be preferred in the following order: First, men to women; * * *"

It is for purely practical reasons that men are to be preferred to women for administrators—the office involves chiefly the business of managing and selling the estate—and this preference is solely because the **average** man has had more business and financial experience than the average woman. Even women in drawing wills

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usually select men as executors instead of women. It should be noted that this section does not deprive a wife of the prior right to administer her husband's estate (subdiv. 1 of section 2588), but merely prefers men to women "if several persons have an equal right."

It must also be remembered that any discrimination that this section may be construed as creating can arise only when the decedent, man or woman, neglects to draw a will. The post of administrator is not eagerly sought after, and is generally regarded as more or less a disagreeable duty.

5. **Descent and distribution of personal property.**

Section 98 of the Decedent Estate Law (Consol. L. ch. 13) provides that if a man die intestate his personal property shall pass as follows: (a) if he leaves a widow and children, one third goes to the widow and the rest to the children; (b) if there are no descendants, and no near kin, the widow takes everything; (c) if there are no children or descendants but are certain kin named in the statute, the widow takes everything up to $2,000, and if there is more than that, $2,000 plus one-half. Section 100 provides that when a married woman dies leaving descendants and a husband, the husband is entitled to the same amount as the wife would be "and no more." Thus, in a case corresponding to the case (a) above, the rule for each is the same. And in a case corresponding to case (b) above, the rule is the same, for the spouse takes all in each case. But where the wife dies leaving no children nor descendants but does leave the kin named in the statute, the husband takes more than the wife would in a corresponding case, i. e., he takes everything, while the wife would take only the $2,000 plus the one-half. See **Robins** v. **McClure,** 100 N. Y., 328. In this one instance of distribution of a decedent's property, this possible discrimination against women exists. But here, too, it should be noted that this possible discrimination can only operate because the wife has not made a will of her personalty. This method of distribution applies, in the words of the statute, only "if the deceased died intestate," or, "if he left a will, such surplus, * * * if not bequeathed." Of course, a wife's right to bequeath her personalty is as perfect as that of her husband (and as we saw above, her right to devise realty is superior to her husband's). In fact, it may be said in general that the rare discriminations against women that can be spelled out of our laws are discriminations that can occur only by reason of the woman's neglect to prevent their inception, while the discriminations against men, such as those set forth above, are ones which he has no power to prevent or destroy.

In fact almost the only real iron-clad unavoidable discrimination

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against women that a careful search of the law of New York discloses is that contained in the Liquor Tax Law (Consol. L. ch. 34) as amended by ch. 264 L. 1912, section 30, subdiv. F,

> "It shall not be lawful for any person * * * to permit any girl or woman not a member of his family * * * to sell or serve any liquor upon the premises."

6. Married Women's Separate Property.

It scarcely seems necessary to point out the full right a married woman has in her property, equal in all respects to the rights a married man has in his, and, **ut supra,** far superior in their exemptions from dower, liability for family support, execution, etc.

Domestic Relations Law, section 50, provides:

> "Property, real or personal, now owned by a married woman, or hereafter owned by a woman at the time of her marriage, * * * and the rents, issues, proceeds and profits thereof, shall continue to be her sole and separate property as if she were unmarried, and shall not be subject to her husband's control or disposal nor liable for his debts."

Section 51 provides:

> "A married woman has all the right in respect to property, real and personal, and the acquisition, use, enjoyment and disposition thereof, and to make contracts in respect thereto with any person, including her husband, and to carry on any business, trade or occupation, and to exercise all powers and enjoy all rights in respect thereto and in respect to her contracts, and be liable on such contracts, as if she were unmarried; * * * All sums that may be recovered in actions or special proceedings by a married woman to recover damages to her person, estate or character shall be the separate property of the wife."

Section 57 of the Law provides:

> "A married woman has a right of action for an injury to her person, property or character or for an injury arising out of the marital relation, as if unmarried."

Section 302 of the Real Property Law (Consol. L. ch. 50), provides:

> "The acknowledgement or proof of a conveyance of real property, within the state, or of any other written instrument, may be made by a married woman the same as if unmarried."

7. Earnings.

Section 60 of the Domestic Relations Law reads:

> "A married woman shall have a cause of action in her own sole and separate right for all wages, salary, profit, compensation or other remuneration for which she may render work, labor or services, or which may be derived from any trade, business or occupation carried on by her, and her husband shall have no right of action therefore unless she or he with her knowledge and consent has otherwise expressly agreed with

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the person obligated to pay such wages, salary, profits, compensation or other remuneration. In any action or proceeding in which a married woman or her husband shall seek to recover wages, salary, profits, compensation or other remuneration for which such married woman has rendered work, labor or services or which was derived from any trade, business or occupation carried on by her or in which the loss of such wages, salary, profits, compensation or other remuneration shall be an item of damage claimed by a married woman or her husband, the presumption of law in all such cases shall be that such married woman is alone entitled thereto, unless the contrary expressly appears."

See also **Stevens** v. **Cunningham,** 181 N. Y. 454, 459, and **Matter of Dailey,** 43 Misc. 552.

The newspapers of March 18, 1915, blazed with headlines that a decision of Judge Morschauser's of the day before in the case, apparently of **Kuenstler** v. **Hopke,** not yet reported, limited the married woman's right, and gave the husband his wife's savings from her own earnings outside the home. But, although the decision is not yet reported, it is apparent from newspaper reports, and the cases mentioned as having been relied on by the Judge, that the decision did not so hold, but only held that the wife must choose, or "elect," to own her earnings before her control over them, at least after they have been collected, is complete. See the opinion by Judge Andrews in **Birkbeck** v. **Ackroyd,** 74 N. Y. 356. As such an election will be implied from scant circumstances, about all the decision means, expressed in everyday language, is that a wife's earnings belong to her unless she gives them to her husband. Judge Morchauser's decision apparently set aside a conveyance of realty which a husband had made to his wife for the purpose of defrauding his creditors, but which he sought to sustain by saying that it was conveyed as consideration for her earnings that she had given him in times past. So there is not anything in that case that impairs the wife's right to her own earnings. Indeed it is difficult to see how any judge could avoid the remarkably broad language of the statute above quoted in affirming the wife's right to her own earnings.

FOURTH.

CHILD LABOR LAWS.

A brief mention of the especial protections afforded by the laws of New York to children will conclude this paper.

The prohibition against factory work is contained in the Labor Law (Consol. L. ch. 31), section 70, as amended by chapter 529 of the Laws of 1913, which reads:

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"No child under the age of fourteen years shall be employed, permitted or suffered to work in or in connection with any factory in this state, or for any factory at any place in this state. No child between the ages of fourteen and sixteen years shall be so employed, permitted or suffered to work unless an employment certificate * * * shall have been theretofore filed * * * "

and the following sections cover the proceeding for obtaining such a certificate, which must be on proper showing of the age, health, schooling, etc., of the child.

Besides these age limits for factory workers, there are limitations of hours for infants so employed, for section 77, as amended by chapter 539 of the Laws of 1912, reads:

"1. No child under the age of sixteen years shall be employed or permitted to work in or in connection with any factory in this state before eight o'clock in the morning, or after five o'clock in the evening of any day, or for more than eight hours in any one day, or more than six days in any one week. 2. No male minor under the age of eighteen years shall be employed or permitted to work in any factory in this state more than six days or fifty-four hours in any one week or for more than nine hours in any one day except as hereinafter provided; nor between the hours of twelve midnight and four o'clock in the morning." (For female minors, as well as adult females, see the quotations above under discussion of the labor laws for women.)

An exception is made in that some more work may be done on particular days in order to make a shorter day for a holiday on another day of the week, and there is an exception for canneries during the preserving season.

Much the same sort of protection is thrown around the child employed in certain other establishments. Section 161, as amended by chapter 331 of the Laws of 1914, reads:

"1. No child under the age of sixteen years shall be employed, permitted or suffered to work in or in connection with any mercantile establishment, business office, telegraph office, restaurant, hotel, apartment house, theater or other place of amusement, bowling alley, barber shop, shoe-polishing establishment, or in the distribution or transmission of merchandise, articles or messages, or in the distribution or sale of articles more than six days or forty-eight hours in any one week, or more than eight hours in any one day, or before eight o'clock in the morning or after six o'clock in the evening of any day."

The following section covers the age below which such establishments shall not employ minors, reading:

"No child under the age of fourteen years shall be employed or permitted to work in o n connection with any mer-

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cantile or other business or establishment specified in the preceding section. No child under the age of sixteen years shall be so employed or permitted to work unless an employment certificate, issued as provided in this article, shall have been theretofore filed in the office of the employer at the place of employment of such child." (as amended by chapter 866 of the Laws of 1911).

In the larger cities there is a prohibition against persons under the age of twenty-one years being employed as messengers for a telegraph or messenger company in the distribution, transmission or delivery of goods or messages before five o'clock in the morning or after ten o'clock in the evening of any day. (Sec. 161-a, as amended by ch. 342 L. 1910.)

There are a great many varieties of dangerous machines which "no child under the age of sixteen years shall be employed or permitted to work in operating or assisting in operating" and this list includes band saws, motor cylinder presses, cutting machines, stamping machinery, boilers, rolling mills, power punches, mixing machinery, and so forth, and concludes, "or in operating or assisting in operating any other machines or machinery which may be found by the industrial board to be dangerous and specificed as such from time to time in rules and regulations adopted by such board." (Sec. 93-1, as amended by ch. 464 of L. 1913.) And the second subdivision of that section lists certain occupations which are too dangerous for children to be allowed to work at, and includes places where dangerous acids are used, paint manufacture, preparation of matches, work with explosives, the handling of alcoholic liquors, etc. As to all these, "no child under the age of sixteen years shall be employed or permitted to work." Nor shall a person of such age work at "adjusting or assisting in adjusting any belt to any machinery, oiling or assisting in oiling, wiping or cleaning machinery * * *." And no child under eighteen shall clean machinery in motion nor use any emery or abrasive or polishing wheel.

There are several sections of the law that apply to the sale and delivery of newspapers by minors. Number 220, as amended by chapter 619 of the laws of 1913, reads:

> "No male child under twelve, and no girl under sixteen years of age, shall in any city of the first, second or third class sell or expose or offer for sale newspapers, magazines or periodicals in any street or public place."

The parts of the law immediately following prohibit anyone under fourteen from selling newspapers, etc., unless a permit has been procured, and such permit shall issue only on proper proof of the age, the schooling, health, and so forth, certified to by the proper

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authorities. But a boy having such a permit, i. e., between fourteen and twelve years of age, may not sell after eight o'clock in the evening or before six in the morning. (Sec. 224.) However, by another section, 161-b, added by chapter 21 of the Laws of 1914, a boy over twelve may, upon obtaining a permit, carry and distribute newspapers over a route, but, apparently, not sell them in the street, from the time school closes until six-thirty, and a boy over fourteen may similarly deliver between five-thirty and eight in the morning.

According to section 131,

> "No child under sixteen years of age shall be employed, permitted or suffered to work in or in connection with any mine or quarry in this state. No female shall be employed, permitted or suffered to work in any mine or quarry in this state."

The Inferior Criminal Courts Act (L. 1910 ch. 659), section 35, provides that there shall be at least one separate part of the court of special sessions in each county for cases involving the trial of children, and that it shall be held in a building apart from that used for the trial of adults. Section 36, as amended by chapter 721 of the Laws of 1911, provides for especial speed in arraignment of children; the notification of their parents or guardians; and that if detention preliminary to trial is necessary it shall be in a children's society rooms, and not at the police station. Under section 39, whenever a child is charged with a misdemeanor,

> "the justice sitting in the children's court shall so far as is consistent with the interest of the child and of the state consider the child not as upon trial for the commission of a crime, but as a child in need of the care and protection of the state; * * * he may in his discretion, in lieu of proceeding with the trial, adjudge the child to be in need of the care and protection of the state and thereupon he shall deal with such child in all respects in the manner provided in section 486 of the penal law in the case of a child not having proper guardianship."

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New York, April 28, 1915.

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